

**Sentencing Council meeting:**  
**Paper number:**  
**Lead Council member:**  
**Lead official:**

**13 May 2022**  
**SC(22)MAY03 – Motoring offences**  
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## **1 ISSUE**

- 1.1 Sign off on draft motoring guidelines for consultation.

## **2 RECOMMENDATIONS**

- 2.1 That Council:

- agree the approach to guidance on driving disqualifications set out below and at **Annex A**;
- consider the provisional findings of the consultation stage resource assessment at (see paragraphs 4.1 to 4.5), noting the significant anticipated impact on prison places; and
- sign off on the draft guidelines at **Annexes B to M** for consultation.

## **3 CONSIDERATION**

### *Disqualification*

3.1 Council discussed how to approach guidance on disqualification at the March meeting. The current Dangerous Driving guideline, like other motoring guidelines used in the magistrates courts, provides disqualification ranges for low and medium seriousness offences (12 to 15 months for low, 15 – 24 months for medium; high seriousness offences are to be committed to the Crown Court). Ranges are also proposed in the drug driving guidelines on which we are consulting, following the lead of the excess alcohol driving guidelines. However, causing death and serious injury guidelines do not currently include any particular guidance on lengths of disqualification.

3.2 The working group has considered what sort of guidance on disqualification could be provided for these guidelines.

3.3 Disqualification serves several of the statutory purposes of sentencing: in earlier years, the focus was on prevention rather than punishment but the case law, statute and guidelines have evolved to include punishment and deterrence. Some of the principles are set out clearly in the case of Islam [2019] EWCA Crim 1494. Notably, the Court of Appeal concluded that “*it remains the position that there is no formula by which a court can measure the right length of a disqualification: it is a judicial decision which should produce a result, tailored to the offender and to the offence.*”

3.4 With that in mind, the working group rejected the idea of providing guideline disqualification ranges within the sentencing table. The necessity for and duration of a disqualification is very fact-sensitive, and will depend on a range of factors which may be particular to the offender: their driving record, the extent to which they acknowledge their error, their immaturity or advanced years, the extent to which not driving prevents rehabilitation or truly represents a punishment etc.

3.5 The new raised minimum disqualification periods of five years for death by dangerous and death by careless under the influence also constrain judicial discretion, particularly if we wanted to base guidance on specific levels on current practice. The relationship between a custodial sentence and disqualification can be complex, in that a shorter period in custody might mean the disqualification constitutes more of the punitive part of the sentence. Equally a longer custodial sentence would serve much of the preventative purpose which a disqualification is intended to provide.

3.6 However, the working group did conclude that fairly detailed general guidance on disqualification would be helpful for sentencers, given the complexity of the law in this area. In particular, there is scope for confusion around the interaction of a disqualification with custodial sentences, being imposed for the same offence as the disqualification, another offence or both.

3.7 The text at **Annex A** brings together guidance borrowed from a variety of sources. It draws on our current magistrates’ [explanatory materials on driving disqualifications](#), as well as relevant case law, most prominently [R v Needham \[2016\] EWCA Crim 455](#). The flowchart on how to determine disqualification periods when imposing sentences for two or more offences is adapted from paragraph 31 of *Needham*.

3.8 This guidance would be inserted as a dropdown in the section of these guidelines at the stage related to ancillary orders. Information about the statutory minimum disqualification period for the offence in question (including repeat offences) would also be included at the

top of the guideline, alongside information about the maximum penalty. For consistency, this would mean removing the current ranges from the (simple) dangerous driving guideline, although it will remain in other magistrates' motoring guidelines.

3.9 Note that the draft at **Annex A** includes information about minimums in cases of repeat offences in the drop-down guidance (section B). This may be helpful general guidance, although it has the potential for confusion as it may not apply to the offence in question. For example, the minimum for causing death by dangerous driving is now five years, regardless of whether the offender has had two or more convictions in the past three years.

3.10 Similarly, the PCSC Act has just made causing death by careless driving under the influence of drink or drugs somewhat of a standalone from the normal repeat rules. For a first time offence it has a minimum of five years; if it is a repeat conviction within 10 years for the exact same offence it is six years. However, if the offender has a previous conviction for another drink/drugs offence the "first time" five year minimum applies (rather than the three year minimum which would apply for most drink/drugs offences).

3.11 There may be an argument either for:

- i) excluding information about repeat offending from this general drop-down guidance and leaving whatever rules apply for the offence in question prominently at the front of the guideline; or
- ii) tailoring this part of the guidance for the individual offence – so, for example omitting anything about drink/drugs repeat offences where that is not relevant. We would need to be clear that the rule being explained is for this specific offence and is not applicable to all offences.

**Question 1: does Council agree to include this guidance at the ancillary orders step of the guidelines on which we are consulting?**

**Question 2: does Council want to include information about repeat offences/disqualifications in the guidance (tailored, if necessary), or only have this information set out at the front of the guideline?**

3.12 There is a question about whether to include the guidance more widely in other guidelines, bearing in mind that under section 163 of the Sentencing Code a disqualification could be imposed for any offence.

3.13 As above, this might need careful thought about the extent to which information on disqualification rules for repeat offending were relevant to the offence in question, and the

statutory references used (i.e. whether the rules on interaction with custody are governed by the Road Traffic Offenders Act 1988 or the Sentencing Code).

3.14 I recommend that we consult first on the guidance as it applies to the offences/guidelines on which we are consulting as part of the motoring package, and consider later whether to include the guidance more widely. It may be a candidate for inclusion in a round of miscellaneous amendments, or as part of wider consideration about encouraging more use of ancillary orders where they are appropriate.

**Question 3: does Council agree to consult first on this guidance for inclusion in the motoring guidelines, reserving the possibility to include it later at the ancillary orders step of other guidelines?**

3.15 The current drafts of the 12 guidelines on which we are consulting are annexed:

- causing death by dangerous driving (s1, Road Traffic Act 1988) **Annex B**;
- causing death by careless driving whilst under the influence of drink or drugs (s3A) **Annex C**;
- causing death by careless driving (s2B) **Annex D**;
- causing serious injury by dangerous driving (s1A) **Annex E**;
- causing serious injury by careless driving (s2C) **Annex F**;
- dangerous driving (s2) **Annex G**;
- causing death by driving whilst disqualified (s3ZC) **Annex H**;
- causing death by driving whilst unlicensed or uninsured (s3ZB) **Annex I**;
- causing serious injury by driving whilst disqualified (s3ZD) **Annex J**;
- causing injury by wanton or furious driving (s35, Offences Against the Person Act 1861) **Annex K**;
- driving or attempting to drive with a specified drug above the specified limit (s5A) **Annex L**; and
- being in charge of a motor vehicle with a specified drug above the specified limit (s5A) **Annex M**.

We have taken the decision to consult on aggravated vehicle taking separately, and the drug driving guidelines (Annexes L and M) are those prepared in 2017 but held back at that point pending further research on drug driving limits.

3.16 Culpability factors are shared between different groups of offences relating to the standard of driving, or to the status of the driver (for example being disqualified), regardless of the harm, injury or death which has resulted. The culpability factors – indeed all the factors – for the drug driving offences are intended to mirror those of the equivalent unfit through drink or drugs guidelines which were revised in 2017, with some alterations to reflect the different ways in which intoxication is measured between drink and drugs.

3.17 For the causing death offences there is only one level of harm, although there is some guidance provided where more than one death has occurred:

*“Where more than one death is caused, it will be appropriate to make an upwards adjustment from the starting point within or above the relevant category range before consideration of other aggravating features. In the most serious cases, the interests of justice may require a total sentence in excess of the offence range for a single offence.”*

3.18 For serious injury offences we have agreed two levels of harm, with the top level being:

- Particularly grave and/or life-threatening injury caused;
- Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment;
- Offence results in a permanent, irreversible injury or condition which has a substantial and long term effect on the victim’s ability to carry out normal day to day activities or on their ability to work.

and the lower level being all other cases. The section 35 offence of wanton or furious driving needs three levels of harm to reflect the broader range of harm that may be encountered with that offence.

3.19 Simple dangerous driving has two levels of harm (higher being offence results in injury to others, circumstances of offence created a high risk of serious harm to others, and damage caused to vehicles or property; lower being all other cases). The drugs guidelines refer to “obvious signs of impairment” and “evidence of an unacceptable standard of driving”. These guidelines therefore include elements related to the standard of driving and the offender’s behaviour within harm.

3.20 Sentencing levels for standard of driving and death and injury offences are set bearing in mind the maximum penalty for causing death by dangerous driving is being increased to life imprisonment, putting it on a broad par with manslaughter. At the lower end of seriousness, where maximum penalties go down to 2 years, there is less room for

manoeuvre whilst keeping coherent tables based on the quality of the driving and the harm caused.

3.21 Aggravating and mitigating factors are common across many of the guidelines, although these do vary based on the offence. For example, in the standard of driving offences driving an HGV is an aggravating factor, where it is a high culpability factor in the unlicensed/uninsured and drug driving offences. For some guidelines aggravating or mitigating factors may refer to a victim (where they are a vulnerable road user, or where they are a close friend or relative of the offender) whereas in other guidelines there will be no victim. Again, the drug driving guidelines are drafted to be more in line with their equivalent unfit through drink or drugs guidelines, rather than the other new and revised guidelines on which we are consulting.

**Question 4: are there any further comments or suggestions on the draft guidelines in the annexes?**

#### **4 IMPACT AND RISKS**

4.1 A consultation stage resource assessment is being finalised and will be circulated to Council members separately. Although the assessment is subject to final checks, we expect it to show that the revised guidelines may result in a requirement for additional prison places running into the hundreds, in particular stemming from the guidelines for causing death by dangerous driving, causing death by careless driving when under the influence of drink or drugs, and causing serious injury by dangerous driving.

4.2 For the offences of causing death by careless or inconsiderate driving and dangerous driving, it is anticipated that the draft guidelines may result in an impact on prison and probation resources, although it is not possible to quantify any impact at this stage.

4.3 For the other offences covered by the draft guidelines, it is difficult to estimate the impact of the guidelines, either due to low volumes or due to a lack of data available on how current cases would be categorised under the new guideline.

4.4 The impact of the new and revised guidelines, particularly for causing death by dangerous driving and causing serious injury by dangerous driving, is clearly significant. It is far different to [the assessment the Government made at the point of introducing the legislation](#) that a “high” scenario for raising the penalty for causing death by dangerous driving would involve 30 more prison places. That assessment appears to be based on the assumption that only the worst cases would see an increase in sentencing severity. By contrast, we have increased sentencing levels across most categories.

4.5 Council may be content that this reflects the most rational approach to these guidelines, particularly considering the need for sentencing levels to be set in proportion to other offences (for example, the levels for causing serious injury by dangerous driving need to be higher than those for causing serious injury by careless driving). However, we will need to defend why we have taken this approach, and be clear of the extent to which it flows from the legislative changes in light of the anticipated impacts on prison places.

**Question 2: bearing in mind the anticipated impact, is the Council content to sign off the draft guidelines for consultation, subject to the final resource assessment broadly reflecting the findings above?**

4.6 We may face criticism from both directions, that our proposed sentence levels are not high enough to reflect the harm caused by dangerous and careless driving, but also that in raising sentencing levels to reflect the new maximum penalties we are contributing to sentence inflation.

4.7 Many of these offences are complex in that harm and culpability can be distinctly out of proportion to each other. Some of the offences relate to the standard of driving, whilst others relate to whether someone should lawfully be on the road, regardless of how they drive. This complexity is compounded by a piecemeal approach to legislating in an emotive area which has resulted in very differing maximum penalties which our guidelines need to navigate. All of this will require careful explanation at consultation, including an upfront explanation of what is in our gift and what the parameters set by Parliament are.

4.8 As above, if the final consultation stage resource assessment confirms the need for several hundred prison places, we will need to prepare lines which defend the approach taken, why our estimates differ from those of the Government, and how the impact is a result of the legislative changes alongside the guidelines.

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## A Principles

Disqualification is part of the sentence. Accordingly when setting the “discretionary” element of the disqualification (i.e. disregarding any period being spent in custody – see below) the court must have regard to the purposes of sentencing in section 57 of the Sentencing Code, which include: the punishment of offenders, the reduction of crime, the reform and rehabilitation of offenders and the protection of the public, when deciding the length of any disqualification.

In setting the length of any disqualification, sentencers should not disqualify for a period that is longer than necessary and should bear in mind the need for rehabilitation (for example, by considering the effects of disqualification on employment or employment prospects).

Sentencers should also be mindful of the risk of long disqualifications leading to further offences being committed, by reason of a temptation to drive unlawfully.

## B Increased minimum for repeat offences

Minimum disqualification periods for first time offences where disqualification is obligatory are set out in individual guidelines.

The minimum disqualification period is automatically increased where there have been certain previous convictions and disqualifications.

An offender must be disqualified for at least **two years** if he or she has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence. The following disqualifications are to be disregarded for the purposes of this provision:

- interim disqualification;
- disqualification where vehicle used for the purpose of crime;
- disqualification for stealing or taking a vehicle or going equipped to steal or take a vehicle.

An offender must be disqualified for at least **three years** if they are convicted of any of the following offences, having been convicted of any of them (or causing death by careless driving under the influence of drink or drugs) once or more in the 10 years preceding the commission of the current offence

- driving or attempting to drive while unfit;
- driving or attempting to drive with excess alcohol;
- driving or attempting to drive with concentration of specified controlled drug above specified limit;
- failing to provide a specimen (where that is an offence involving obligatory disqualification); or
- failing to allow a specimen to be subjected to laboratory test (where that is an offence involving obligatory disqualification).

## C Special reasons

The period of disqualification may be reduced or avoided if there are special reasons. These must relate to the offence; circumstances peculiar to the offender **cannot** constitute special reasons. To constitute a special reason, a matter must:

- be a mitigating or extenuating circumstance;
- not amount in law to a defence to the charge;
- be directly connected with the commission of the offence;
- be one which the court ought properly to take into consideration when imposing sentence.

#### D Interaction with custodial period – same offence

Under section 35A of the Road Traffic Offenders Act 1988 (for Road Traffic Act 1988 offences) or section 166 of the Sentencing Code (all other offences), where a court imposes a disqualification in addition to a custodial sentence or a detention and training order, it must extend the disqualification period to take account of the custodial term imposed by:

- **one half** of the custodial term imposed for a standard determinate sentence (except where release is at the two thirds point – see below);
- **two thirds** of the custodial term for:
  - o an extended sentence (except for serious terrorism offences – see below);
  - o a sentence for offenders of particular concern; or
  - o a standard determinate sentence for certain serious violent or sexual offences listed in subsections 244ZA(4) or (5) of the Criminal Justice Act 2003.
- **the custodial element** of a serious terrorism sentence or extended sentence for a serious terrorism offence (i.e. one which carries a maximum of life imprisonment); or
- **the term specified** in the minimum term order of a life sentence.

This will avoid the disqualification expiring, or being significantly diminished, during the period the offender is in custody. The table at [section 166 of the Sentencing Code](#) provides further detail. (Note: this table applies to disqualification for non-Road Traffic Act 1988 offences but the principles apply to disqualifications imposed under that Act as well.)

Periods of time spent on remand or subject to an electronically monitored curfew are generally ignored. However, if the time spent on remand would lead to a disproportionate result in terms of the period of disqualification, then the court may consider setting the discretionary element (i.e. the period which would have been imposed but for the need to extend for time spent in custody) to take account of time spent on remand. This should not reduce the discretionary term below the statutory minimum period of disqualification.

#### E Interaction with custodial period – different offence

The Court may be imposing a custodial sentence on the offender for another offence, which is not the one for which they are being disqualified. In this instance, under either section 35B of the Road Traffic Offenders Act 1988 (for Road Traffic Act 1988 offences) or section 167 of the Sentencing Code (all other offences), it should have regard to "the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence".

Where the court is intending to impose a disqualification and considering a custodial sentence for that and/or another offence, the following checklist may be useful:

- Step 1 – does the court intend to impose a custodial term for the offence for which they are imposing a disqualification?

YES – the court must impose the appropriate extension period and consider step 2.

NO – go to step 3.

- Step 2 – does the court intend to impose a custodial term for another offence (which is longer or consecutive) or is the defendant already serving a custodial sentence?

YES – consider what uplift in the period of discretionary disqualification (i.e. the period which would have been imposed but for the need to extend for time spent in custody) is required, having regard to the diminished effect of disqualification as a distinct punishment. Ignore any custodial term imposed for the offence for which disqualification is being imposed. **Discretionary period + extension period + uplift = total period of disqualification**

NO – no further uplift required. **Discretionary period + extension period = total period of disqualification**

- Step 3 – does the court intend to impose a custodial term for another offence or is the defendant already serving a custodial sentence?

YES – then consider what uplift in the period of discretionary disqualification is required, having regard to the diminished effect of disqualification as a distinct punishment. **Discretionary period + uplift = total period of disqualification**

NO – no increase is needed to the discretionary period.

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# **Causing death by dangerous driving**

**Road Traffic Act 1988 (section 1)**

**Triable only on indictment**

**Maximum: life imprisonment**

**Offence range: 2 – 18 years' custody**

**This is a specified offence for the purposes of sections 266 and 279 (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code**

**Obligatory disqualification: minimum 5 years with compulsory extended re-test**

**STEP ONE****Determining the offence category****CULPABILITY**

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify upwards adjustment from the starting point before consideration of aggravating/mitigating factors.

<b>A-</b> High culpability	<ul style="list-style-type: none"> <li>• Deliberate decision to ignore the rules of the road and disregard for the risk of danger to others.</li> <li>• Prolonged, persistent and deliberate course of dangerous driving</li> <li>• Consumption of substantial amounts of alcohol or drugs leading to gross impairment</li> <li>• Offence committed in course of police pursuit</li> <li>• Racing or competitive driving against another vehicle</li> <li>• Disregarding warnings of others</li> <li>• Lack of attention to driving for a substantial period of time</li> <li>• Speed greatly in excess of speed limit</li> </ul>
<b>B-</b> Medium culpability	<ul style="list-style-type: none"> <li>• Brief but obviously highly dangerous manoeuvre</li> <li>• Engaging in a brief but avoidable distraction</li> <li>• Driving knowing that the vehicle has a dangerous defect or is dangerously loaded</li> <li>• Driving at a speed that is inappropriate for the prevailing road or weather conditions, although not greatly excessive</li> <li>• Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs</li> <li>• Disregarding advice relating to driving when taking medication or as a result of a known medical condition which significantly impaired the offender's driving skills</li> <li>• Driving when knowingly deprived of adequate sleep or rest</li> <li>• The offender's culpability falls between the factors as described in high and lesser culpability</li> </ul>
<b>C-</b> Lesser culpability	<ul style="list-style-type: none"> <li>• Standard of driving was just over threshold for dangerous driving</li> <li>• Momentary lapse of concentration</li> </ul>

### HARM

For all cases the harm caused will inevitably be of the utmost seriousness. The loss of life is taken into account in the sentencing levels at step two.

### STEP TWO

The starting points and category ranges below relate to a single offence resulting in a single death. Where another offence or offences arise out of the same incident or facts, concurrent sentences reflecting the overall criminality will ordinarily be appropriate.

Where more than one death is caused, it will be appropriate to make an upwards adjustment from the starting point within or above the relevant category range before consideration of other aggravating features. In the most serious cases, the interests of justice may require a total sentence in excess of the offence range for a single offence. See the Totality guideline and step six of this guideline.

#### Starting point and category range

Culpability	Starting point	Range
High	12 years	8 – 18 years
Medium	6 years	4 – 9 years
Lesser	3 years	2 – 5 years

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

#### Factors increasing seriousness

##### *Statutory aggravating factors:*

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

##### *Other aggravating factors:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Driving for commercial purposes
- Driving LGV, HGV, PSV
- Other driving offences committed at the same time as the dangerous driving
- Blame wrongly placed on others
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children

- Vehicle poorly maintained
- Serious injury to one or more victims, in addition to the death(s) (see step 6 on totality when sentencing for more than one offence)
- Offence committed on licence or while subject to court order(s)

### **Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Impeccable driving record
- Actions of the victim or a third party contributed significantly to collision or death
- Offence due to inexperience rather than irresponsibility (where offender qualified to drive)
- Genuine emergency
- Efforts made to assist or seek assistance for victim(s)
- Remorse
- The victim was a close friend or relative
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

### **STEP THREE**

#### **Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

### **STEP FOUR**

#### **Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.

### **STEP FIVE**

#### **Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 6 of Part 10 of the Sentencing Code it would be appropriate to impose an extended sentence (sections 266 and 279) When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

### **STEP SIX**

#### **Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.



**STEP SEVEN**

**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

- Ancillary orders – Crown Court Compendium

**STEP EIGHT**

**Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE**

**Consideration for time spent on bail (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

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# **Causing death by careless driving whilst under the influence of drink or drugs**

## **Causing death by careless driving when under the influence of drink or drugs or having failed either to provide a specimen for analysis or to permit analysis of a blood sample**

**Road Traffic Act 1988 (section 3A)**

**Triable on indictment only**

**Maximum: life imprisonment**

**Offence range: 26 weeks – 18 years' custody**

**This is a specified offence for the purposes of sections 266 and 279 (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code**

**Obligatory disqualification: minimum 5 years**

**(Minimum 6 years disqualification if the offender has been convicted of this same offence in the 10 years preceding commission of the present offence)**

**STEP ONE****Determining the offence category****CULPABILITY**

There are two aspects to assessing culpability for this offence.

**1)** The court should first determine the standard of driving with reference to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify upwards adjustment from the starting point before consideration of aggravating/mitigating factors.

<b>High</b>	<ul style="list-style-type: none"> <li>Standard of driving was just below threshold for dangerous driving and/or includes extreme example of a medium culpability factor</li> </ul>
<b>Medium</b>	<ul style="list-style-type: none"> <li>Unsafe manoeuvre or positioning</li> <li>Engaging in a brief but avoidable distraction</li> <li>Driving at a speed that is inappropriate for the prevailing road or weather conditions</li> <li>Driving vehicle which is unsafe or where driver's visibility or controls are obstructed</li> <li>Driving in disregard of advice relating to the effects of medical condition or medication (where the medication does not form a basis of the offence)</li> <li>Driving whilst ability to drive impaired as a result of a known medical condition</li> <li>Driving when deprived of adequate sleep or rest</li> <li>The offender's culpability falls between the factors as described in high and lesser culpability</li> </ul>
<b>Lesser</b>	<ul style="list-style-type: none"> <li>Standard of driving was just over threshold for careless driving</li> <li>Momentary lapse of concentration</li> </ul>

**2)** Factors relevant to the presence of alcohol or drugs or a failure to provide a sample for analysis should then be considered to identify the appropriate offence category and starting point of sentence in accordance with the table at step two.

**HARM**

For all cases the harm caused will inevitably be of the utmost seriousness. The loss of life is taken into account in the sentencing levels at step two.

**STEP TWO**

The starting points and category ranges below relate to a single offence resulting in a single death. Where another offence or offences arise out of the same incident or

facts, concurrent sentences reflecting the overall criminality will ordinarily be appropriate.

Where more than one death is caused, it will be appropriate to make an upwards adjustment from the starting point within or above the relevant category range before consideration of other aggravating features. In the most serious cases, the interests of justice may require a total sentence in excess of the offence range for a single offence. See the Totality guideline and step six of this guideline.

### Starting point and category range

The legal limit of alcohol is 35µg breath (80mg in blood and 107mg in urine)	High culpability	Medium culpability	Lesser culpability
H71µ or above of alcohol OR Deliberate refusal to provide specimen for analysis OR Evidence of substantial impairment and/or multiple drugs or combination of drugs and alcohol	Starting point: 12 years  Sentencing range: 8 – 18 years	Starting point: 9 years  Sentencing range: 6 – 12 years	Starting point: 6 years  Sentencing range: 5 – 10 years
51- 70 µg of alcohol OR Any quantity of a single drug detected	Starting point: 9 years  Sentencing range: 6 – 12 years	Starting point: 6 years  Sentencing range: 4 – 9 years	Starting point: 4 years  Sentencing range: 3 – 7 years
36-50 µg of alcohol	Starting point: 6 years  Sentencing range: 4 – 9 years	Starting point: 3 years  Sentencing range: 2 – 5 years	Starting point: 1 year 6 months  Sentencing range: 26 weeks - 4 years

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

#### Factors increasing seriousness

*Statutory aggravating factors:*

- Previous convictions, having regard to a) the **nature** of the offence to which the

conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

- Offence committed whilst on bail

### *Other aggravating factors:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Disregarding warnings of others
- Driving for commercial purposes
- Driving LGV, HGV, PSV
- Other driving offences committed at the same time as the careless driving
- Blame wrongly placed on others
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Vehicle poorly maintained
- Serious injury to one or more victims, in addition to the death(s) (see step 6 on totality when sentencing for more than one offence)
- Offence committed on licence or while subject to court order(s)

### **Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Impeccable driving record
- Alcohol or drugs consumed unwittingly
- Actions of the victim or a third party contributed significantly to collision or death
- Offence due to inexperience rather than irresponsibility (where offender qualified to drive)
- Genuine emergency
- Efforts made to assist or seek assistance for victim(s)
- Remorse
- The victim was a close friend or relative
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

### **STEP THREE**

#### **Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

### **STEP FOUR**

#### **Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.

### **STEP FIVE**

#### **Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 6 of Part 10 of the Sentencing Code it would be appropriate to impose an extended sentence (sections 266 and 279) When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

### **STEP SIX**

#### **Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

### **STEP SEVEN**

#### **Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

- Ancillary orders – Crown Court Compendium

### **STEP EIGHT**

#### **Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

### **STEP NINE**

#### **Consideration for time spent on bail (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

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# **Causing death by careless or inconsiderate driving**

**Road Traffic Act 1988 (section 2B)**

**Triable either way**

**Maximum: 5 years' custody**

**Offence range: Community order – 4 years' custody**

**Obligatory disqualification: minimum 1 year.**

**(Minimum 2 years disqualification if the offender has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence)**

**STEP ONE****Determining the offence category****CULPABILITY**

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify upwards adjustment from the starting point before consideration of aggravating/mitigating factors.

<b>A - High culpability</b>	<ul style="list-style-type: none"> <li>• Standard of driving was just below threshold for dangerous driving and/or includes extreme example of a medium culpability factor</li> </ul>
<b>B - Medium culpability</b>	<ul style="list-style-type: none"> <li>• Unsafe manoeuvre or positioning</li> <li>• Engaging in a brief but avoidable distraction</li> <li>• Driving at a speed that is inappropriate for the prevailing road or weather conditions</li> <li>• Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs</li> <li>• Driving vehicle which is unsafe or where driver's visibility or controls are obstructed</li> <li>• Driving in disregard of advice relating to the effects of medical condition or medication</li> <li>• Driving whilst ability to drive impaired as a result of a known medical condition</li> <li>• Driving when deprived of adequate sleep or rest</li> <li>• The offender's culpability falls between the factors as described in high and lesser culpability</li> </ul>
<b>C – Lesser culpability</b>	<ul style="list-style-type: none"> <li>• Standard of driving was just over threshold for careless driving</li> <li>• Momentary lapse of concentration</li> </ul>

**HARM**

For all cases the harm caused will inevitably be of the utmost seriousness. The loss of life is taken into account in the sentencing levels at step two.

**STEP TWO**

The starting points and category ranges below relate to a single offence resulting in a single death. Where another offence or offences arise out of the same incident or

facts, concurrent sentences reflecting the overall criminality will ordinarily be appropriate.

Where more than one death is caused, it will be appropriate to make an upwards adjustment from the starting point within or above the relevant category range before consideration of other aggravating features. In the most serious cases, the interests of justice may require a total sentence in excess of the offence range for a single offence. See the Totality guideline and step five of this guideline.

#### Starting point and category range

Culpability	Starting point	Range
High	2 years	1 – 4 years
Medium	1 year	26 weeks – 3 years
Lesser	26 weeks	Medium level community order – 1 year

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

#### Factors increasing seriousness

##### *Statutory aggravating factors:*

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

##### *Other aggravating factors:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Disregarding warnings of others
- Driving for commercial purposes
- Driving LGV, HGV, PSV
- Other driving offences committed at the same time as the careless driving
- Blame wrongly placed on others
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Vehicle poorly maintained
- Serious injury to one or more victims, in addition to the death(s) (see step 5 on totality when sentencing for more than one offence)
- Offence committed on licence or while subject to court order(s)

#### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Impeccable driving record
- Actions of the victim or a third party contributed significantly to collision or death
- Offence due to inexperience rather than irresponsibility (where offender qualified to drive)
- Genuine emergency
- Efforts made to assist or seek assistance for victim(s)
- Remorse
- The victim was a close friend or relative
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

### **STEP THREE**

#### **Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

### **STEP FOUR**

#### **Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.

### **STEP FIVE**

#### **Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

### **STEP SIX**

#### **Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Ancillary orders – Crown Court Compendium

### **STEP SEVEN**

#### **Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

### **STEP EIGHT**

#### **Consideration for time spent on bail (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

# **Causing serious injury by dangerous driving**

**Road Traffic Act 1988 (section 1A)**

**Triable either way**

**Maximum: 5 years' custody,**

**Offence range: 26 weeks – 5 years' custody**

**Obligatory disqualification: minimum 2 years with compulsory extended re-test**

**STEP ONE****Determining the offence category****CULPABILITY**

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify upwards adjustment from the starting point before consideration of aggravating/mitigating factors.

<b>A-</b> High culpability	<ul style="list-style-type: none"> <li>• Deliberate decision to ignore the rules of the road and disregard for the risk of danger to others.</li> <li>• Prolonged, persistent and deliberate course of dangerous driving</li> <li>• Consumption of substantial amounts of alcohol or drugs leading to gross impairment</li> <li>• Offence committed in course of police pursuit</li> <li>• Racing or competitive driving against another vehicle</li> <li>• Disregarding warnings of others</li> <li>• Lack of attention to driving for a substantial period of time</li> <li>• Speed greatly in excess of speed limit</li> </ul>
<b>B-</b> Medium culpability	<ul style="list-style-type: none"> <li>• Brief but obviously highly dangerous manoeuvre</li> <li>• Engaging in a brief but avoidable distraction</li> <li>• Driving knowing that the vehicle has a dangerous defect or is dangerously loaded</li> <li>• Driving at a speed that is inappropriate for the prevailing road or weather conditions, although not greatly excessive</li> <li>• Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs</li> <li>• Disregarding advice relating to driving when taking medication or as a result of a known medical condition which significantly impaired the offender's driving skills</li> <li>• Driving when knowingly deprived of adequate sleep or rest</li> <li>• The offender's culpability falls between the factors as described in high and lesser culpability</li> </ul>
<b>C-</b> Lesser culpability	<ul style="list-style-type: none"> <li>• Standard of driving was just over threshold for dangerous driving</li> <li>• Momentary lapse of concentration</li> </ul>

<b>HARM</b>	
Category 1	<ul style="list-style-type: none"> <li>• Particularly grave and/or life-threatening injury caused</li> <li>• Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</li> <li>• Offence results in a permanent, irreversible injury or condition which has a substantial and long term effect on the victim's ability to carry out normal day to day activities or on their ability to work</li> </ul>
Category 2	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

**STEP TWO****Starting point and category range**

	<b>Culpability</b>		
	A	B	C
Harm 1	<b>Starting Point:</b> 4 years <b>Category range:</b> 3 – 5 years	<b>Starting Point:</b> 3 years <b>Category range:</b> 2 – 4 years	<b>Starting Point:</b> 2 years <b>Category range:</b> 1 – 3 years
Harm 2	<b>Starting Point:</b> 3 years <b>Category range:</b> 2 – 4 years	<b>Starting Point:</b> 2 years <b>Category range:</b> 1 – 3 years	<b>Starting Point:</b> 1 year <b>Category range:</b> 26 weeks – 2 years

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Offences Taken into Consideration and Totality* guideline and step five of this guideline.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

**Factors increasing seriousness***Statutory aggravating factors:*

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

### *Other aggravating factors:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Driving for commercial purposes
- Driving LGV, HGV, PSV
- Other driving offences committed at the same time as the dangerous driving
- Blame wrongly placed on others
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Vehicle poorly maintained
- Offence committed on licence or while subject to court order(s)

### **Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Impeccable driving record
- Actions of the victim or a third party contributed significantly to collision
- Offence due to inexperience rather than irresponsibility (where offender qualified to drive)
- Genuine emergency
- Efforts made to assist or seek assistance for victim(s)
- Remorse
- The victim was a close friend or relative
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

### **STEP THREE**

#### **Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

### **STEP FOUR**

#### **Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.



**STEP FIVE**

**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

**STEP SIX**

**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

- Ancillary orders – Magistrates' Court
- Ancillary orders – Crown Court Compendium

**STEP SEVEN**

**Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP EIGHT**

**Consideration for time spent on bail (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

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# **Causing serious injury by careless or inconsiderate driving**

**Road Traffic Act 1988 (section 2C)**

**Triable either way**

**Maximum: 2 years' custody**

**Offence range: Community order – 2 years' custody**

**Obligatory disqualification: minimum 12 months**

**(Minimum 2 years disqualification if the offender has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence)**

**STEP ONE****Determining the offence category****CULPABILITY**

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify upwards adjustment from the starting point before consideration of aggravating/mitigating factors.

<b>A – High culpability</b>	<ul style="list-style-type: none"> <li>Standard of driving was just below threshold for dangerous driving and/or includes extreme example of a medium culpability factor</li> </ul>
<b>B – Medium culpability</b>	<ul style="list-style-type: none"> <li>Unsafe manoeuvre or positioning</li> <li>Engaging in a brief but avoidable distraction</li> <li>Driving at a speed that is inappropriate for the prevailing road or weather conditions</li> <li>Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs</li> <li>Driving vehicle which is unsafe or where driver's visibility or controls are obstructed</li> <li>Driving in disregard of advice relating to the effects of medical condition or medication</li> <li>Driving whilst ability to drive impaired as a result of a known medical condition</li> <li>Driving when deprived of adequate sleep or rest</li> <li>The offender's culpability falls between the factors as described in high and lesser culpability</li> </ul>
<b>C – Lesser culpability</b>	<ul style="list-style-type: none"> <li>Standard of driving was just over threshold for careless driving Momentary lapse of concentration</li> </ul>

**HARM**

<b>Category 1</b>	<ul style="list-style-type: none"> <li>Particularly grave and/or life-threatening injury caused</li> <li>Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</li> <li>Offence results in a permanent, irreversible injury or condition which has a substantial and long term effect on the victim's ability to carry out normal day to day activities or on their ability to work</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>All other cases</li> </ul>

## STEP TWO

## Starting point and category range

	Culpability		
	A	B	C
Harm 1	<b>Starting Point:</b> 1 year 6 months <b>Category range:</b> 1 - 2 years	<b>Starting Point:</b> 1 year <b>Category range:</b> 26 weeks – 1 year 6 months	<b>Starting Point:</b> 26 weeks <b>Category range:</b> High level community order – 1 year
Harm 2	<b>Starting Point:</b> 1 year <b>Category range:</b> 26 weeks – 1 year 6 months	<b>Starting Point:</b> 26 weeks <b>Category range:</b> High level community order – 1 year	<b>Starting Point:</b> High level community order <b>Category range:</b> Low level community order – 26 weeks

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to *Totality* guideline and step five of this guideline.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

### Factors increasing seriousness

#### *Statutory aggravating factors:*

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

#### *Other aggravating factors:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Disregarding warnings of others
- Driving for commercial purposes
- Driving LGV, HGV, PSV
- Other driving offences committed at the same time as the careless driving
- Blame wrongly placed on others
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Vehicle poorly maintained
- Offence committed on licence or while subject to court order(s)

- **Factors reducing seriousness or reflecting personal mitigation**
- No previous convictions or no relevant/recent convictions
- Impeccable driving record
- Actions of the victim or a third party contributed significantly to collision or death
- Offence due to inexperience rather than irresponsibility (where offender qualified to drive)
- Genuine emergency
- Efforts made to assist or seek assistance for victim(s)
- Remorse
- The victim was a close friend or relative
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

### **STEP THREE**

#### **Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

### **STEP FOUR**

#### **Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.

### **STEP FIVE**

#### **Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

### **STEP SIX**

#### **Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

- Ancillary orders – Magistrates' Court
- Ancillary orders – Crown Court Compendium

### **STEP SEVEN**

#### **Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP EIGHT**

**Consideration for time spent on bail (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

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# **Dangerous driving**

**Road Traffic Act 1988 (section 2)**

**Triable either way**

**Maximum: 2 years' custody**

**Offence range: Community order – 2 years' custody**

**Obligatory disqualification: minimum 1 year with compulsory extended re-test**

**(Minimum 2 years disqualification if the offender has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence)**

**STEP ONE****Determining the offence category****CULPABILITY**

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify upwards adjustment from the starting point before consideration of aggravating/mitigating factors.

<b>A-</b> High Culpability	<ul style="list-style-type: none"> <li>• Deliberate decision to ignore the rules of the road and disregard for the risk of danger to others.</li> <li>• Prolonged, persistent and deliberate course of dangerous driving</li> <li>• Consumption of substantial amounts of alcohol or drugs leading to gross impairment</li> <li>• Offence committed in course of police pursuit</li> <li>• Racing or competitive driving against another vehicle</li> <li>• Disregarding warnings of others</li> <li>• Lack of attention to driving for a substantial period of time</li> <li>• Speed greatly in excess of speed limit</li> </ul>
<b>B-</b> Medium culpability	<ul style="list-style-type: none"> <li>• Brief but obviously highly dangerous manoeuvre</li> <li>• Engaging in a brief but avoidable distraction</li> <li>• Driving knowing that the vehicle has a dangerous defect or is dangerously loaded</li> <li>• Driving at a speed that is inappropriate for the prevailing road or weather conditions, although not greatly excessive</li> <li>• Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs</li> <li>• Disregarding advice relating to driving when taking medication or as a result of a known medical condition which significantly impaired the offender's driving skills</li> <li>• Driving when knowingly deprived of adequate sleep or rest</li> <li>• The offender's culpability falls between the factors as described in high and lower culpability</li> </ul>
<b>C-</b> Lower culpability	<ul style="list-style-type: none"> <li>• Standard of driving was just over threshold for dangerous driving</li> <li>• Momentary lapse of concentration</li> </ul>

<b>HARM</b>	
Category 1	<ul style="list-style-type: none"> <li>• Offence results in injury to others</li> <li>• Circumstances of offence created a high risk of serious harm to others</li> <li>• Damage caused to vehicles or property</li> </ul>
Category 2	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

**STEP TWO****Starting point and category range**

	<b>Culpability</b>		
	A	B	C
Harm 1	<b>Starting Point:</b> 1 year 6 months <b>Category range:</b> 1 – 2 years	<b>Starting Point:</b> 1 year <b>Category range:</b> 26 weeks – 1 year 6 months	<b>Starting Point:</b> 26 weeks <b>Category range:</b> High level community order – 1 year
Harm 2	<b>Starting Point:</b> 1 year <b>Category range:</b> 26 weeks – 1 year 6 months	<b>Starting Point:</b> 26 weeks <b>Category range:</b> High level community order – 1 year	<b>Starting Point:</b> High level community order <b>Category range:</b> Low level community order – 26 weeks

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Totality* guideline and step five of this guideline.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

**Factors increasing seriousness***Statutory aggravating factors:*

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

### *Other aggravating factors:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Driving for commercial purposes
- Driving LGV, HGV, PSV
- Other driving offences committed at the same time as the dangerous driving
- Blame wrongly placed on others
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Vehicle poorly maintained
- Offence committed on licence or while subject to court order(s)

### **Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Impeccable driving record
- The victim was a close friend or relative
- Actions of the victim or a third party contributed significantly to collision
- Offence due to inexperience rather than irresponsibility (where offender qualified to drive)
- Genuine emergency
- Efforts made to assist or seek assistance for victim(s)
- Remorse
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

### **STEP THREE**

#### **Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

### **STEP FOUR**

#### **Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.

**STEP FIVE**

**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

**STEP SIX**

**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Ancillary orders – Magistrates' Court

Ancillary orders – Crown Court Compendium

**STEP SEVEN**

**Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP EIGHT**

**Consideration for time spent on bail (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

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# **Causing death by driving; disqualified drivers**

**Road Traffic Act 1988 (section 3ZC)**

**Triable only on indictment**

**Maximum: 10 years' custody**

**Offence range: Community order – 7 years' custody**

**This is a specified offence for the purposes of sections 266 and 279 (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.**

**Obligatory disqualification: minimum 2 years with compulsory extended re-test**

**STEP ONE****Determining the offence category**

<b>CULPABILITY</b>	
The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence.	
High culpability	<ul style="list-style-type: none"> <li>• Driving shortly after disqualification imposed</li> <li>• Vehicle obtained during disqualification period</li> <li>• Driving for commercial purposes Driving LGV, HGV, PSV</li> <li>• Significant distance driven</li> </ul>
Medium culpability	<ul style="list-style-type: none"> <li>• Cases falling between higher and lesser culpability because:               <ul style="list-style-type: none"> <li>○ Factors are present in higher and lesser culpability which balance each other out and/or</li> <li>○ The offender's culpability falls between the factors as described in higher and lesser culpability</li> </ul> </li> </ul>
Lesser culpability	<ul style="list-style-type: none"> <li>• The offender genuinely believed that he or she was not disqualified to drive</li> <li>• Decision to drive was brought about by a genuine and proven emergency</li> <li>• Driving whilst disqualified by pressure, coercion or intimidation (where not amounting to a defence)</li> </ul>

**HARM**

For all cases the harm caused will inevitably be of the utmost seriousness. The loss of life is taken into account in the sentencing levels at step two.

**STEP TWO**

The starting points and category ranges below relate to a single offence resulting in a single death. Where another offence or offences arise out of the same incident or facts, concurrent sentences reflecting the overall criminality will ordinarily be appropriate

Where more than one death is caused, it will be appropriate to make an upwards adjustment from the starting point within or above the relevant category range before consideration of other aggravating features. In the most serious cases, the interests of justice may require a total sentence in excess of the offence range for a single offence. See the Totality guideline and step six of this guideline.



<b>Starting point and category range</b>
------------------------------------------

<b>Culpability</b>	<b>Starting point</b>	<b>Range</b>
High	5 years	4 – 7 years
Medium	3 years	2 – 5 years
Lesser	1 year 6 months	High level community order to 2 years

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

### Factors increasing seriousness

#### *Statutory aggravating factors:*

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- **Note:** An offender convicted of this offence will always have at least one relevant previous conviction for the offence that resulted in disqualification. The starting points and ranges take this into account; any other previous convictions should be considered in the usual way.
- Offence committed whilst on bail

#### *Other aggravating factors:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- History of disobedience to disqualification orders (where not already taken into account as a previous conviction)
- Disregarding warnings of others about driving whilst disqualified
- Blame wrongly placed on others
- False details given
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Serious injury to one or more victims, in addition to the death(s) (see step 6 on totality when sentencing for more than one offence)
- Offence committed on licence or while subject to court order(s) (not including the current order for disqualification)

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Actions of the victim or a third party contributed significantly to collision or death
- Efforts made to assist or seek assistance for victim(s)
- Remorse
- The victim was a close friend or relative

- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relative(s)

### **STEP THREE**

#### **Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

### **STEP FOUR**

#### **Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.

### **STEP FIVE**

#### **Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 6 of Part 10 of the Sentencing Code it would be appropriate to impose an extended sentence (sections 266 and 279).

### **STEP SIX**

#### **Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

### **STEP SEVEN**

#### **Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Ancillary orders – Crown Court Compendium

### **STEP EIGHT**

#### **Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

### **STEP NINE**

#### **Consideration for time spent on bail (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

# **Causing death by driving: unlicensed or uninsured drivers**

**Road Traffic Act 1988 (section 3ZB)**

**Triable either way**

**Maximum: 2 years' custody**

**Offence range: Community order – 2 years' custody**

**Obligatory disqualification: minimum 12 months**

**(Minimum 2 years disqualification if the offender has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence)**

**STEP ONE****Determining the offence category**

<b>CULPABILITY</b>	
The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence.	
High culpability	<ul style="list-style-type: none"> <li>• Driving for commercial purposes Driving LGV, HGV, PSV</li> <li>• Significant distance driven</li> </ul>
Medium culpability	<ul style="list-style-type: none"> <li>• Cases falling between higher and lesser culpability because:               <ul style="list-style-type: none"> <li>○ Factors are present in higher and lesser culpability which balance each other out and/or</li> <li>○ The offender's culpability falls between the factors as described in higher and lesser culpability</li> </ul> </li> </ul>
Lesser culpability	<ul style="list-style-type: none"> <li>• The offender genuinely believed that he or she was insured or licensed to drive</li> <li>• Decision to drive was brought about by a genuine and proven emergency</li> <li>• Driving whilst unlicensed or uninsured by pressure, coercion or intimidation (where not amounting to a defence)</li> </ul>

**HARM**

For all cases the harm caused will inevitably be of the utmost seriousness. The loss of life is taken into account in the sentencing levels at step two.

**STEP TWO**

The starting points and category ranges below relate to a single offence resulting in a single death. Where another offence or offences arise out of the same incident or facts, concurrent sentences reflecting the overall criminality will ordinarily be appropriate.

Where more than one death is caused, it will be appropriate to make an upwards adjustment from the starting point within or above the relevant category range before consideration of other aggravating features. In the most serious cases, the interests of justice may require a total sentence in excess of the offence range for a single offence. See the Totality guideline and step five of this guideline.

<b>Starting point and category range</b>
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<b>Culpability</b>	<b>Starting point</b>	<b>Range</b>
High	1 year	36 weeks to 2 years
Medium	26 weeks	High level community order – 36 weeks
Lesser	Medium level community order	Low level community order – high level community order

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

### **Factors increasing seriousness**

#### *Statutory aggravating factors:*

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

#### *Other aggravating factors:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Disregarding warnings of others about driving whilst unlicensed or uninsured
- Blame wrongly placed on others
- False details given
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Serious injury to one or more victims, in addition to the death(s) (see step 5 on totality when sentencing for more than one offence)
- Offence committed on licence or while subject to court order(s)

### **Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Impeccable driving record
- Actions of the victim or a third party contributed significantly to collision or death
- Efforts made to assist or seek assistance for victim(s)
- Remorse
- The victim was a close friend or relative
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

### **STEP THREE**

#### **Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

### **STEP FOUR**

#### **Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.

### **STEP FIVE**

#### **Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

### **STEP SIX**

#### **Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

- Ancillary orders – Magistrates' Court
- Ancillary orders – Crown Court Compendium

### **STEP SEVEN**

#### **Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

### **STEP EIGHT**

#### **Consideration for time spent on bail (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

# **Causing serious injury by driving: disqualified drivers**

**Road Traffic Act 1988 (section 3ZD)**

**Triable either way**

**Maximum: 4 years' custody**

**Offence range: Community order – 4 years' custody**

**Obligatory disqualification: minimum 2 years with compulsory  
extended re-test**

**STEP ONE****Determining the offence category**

<b>CULPABILITY</b>	
The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence.	
<b>A - High culpability</b>	<ul style="list-style-type: none"> <li>• Driving shortly after disqualification imposed</li> <li>• Vehicle obtained during disqualification period</li> <li>• Driving for commercial purposes Driving LGV, HGV, PSV</li> <li>• Significant distance driven</li> </ul>
<b>B - Medium culpability</b>	<ul style="list-style-type: none"> <li>• Cases falling between higher and lesser culpability because:               <ul style="list-style-type: none"> <li>○ Factors are present in higher and lesser culpability which balance each other out and/or</li> <li>○ The offender's culpability falls between the factors as described in higher and lesser culpability</li> </ul> </li> </ul>
<b>C - Lesser culpability</b>	<ul style="list-style-type: none"> <li>• The offender genuinely believed that he or she was not disqualified to drive</li> <li>• Decision to drive was brought about by a genuine and proven emergency</li> <li>• Driving whilst disqualified by pressure, coercion or intimidation (where not amounting to a defence)</li> </ul>

<b>HARM</b>	
Category 1	<ul style="list-style-type: none"> <li>• Particularly grave and/or life-threatening injury caused</li> <li>• Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</li> <li>• Offence results in a permanent, irreversible injury or condition which has a substantial and long term effect on the victim's ability to carry out normal day to day activities or on their ability to work</li> </ul>
Category 2	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>



## STEP TWO

## Starting point and category range

	Culpability		
	A	B	C
Harm 1	<b>Starting Point:</b> 3 years <b>Category range:</b> 2 – 4 years	<b>Starting Point:</b> 2 years <b>Category range:</b> 1 – 3 years	<b>Starting Point:</b> 1 year <b>Category range:</b> High level community order – 2 years
Harm 2	<b>Starting Point:</b> 2 years <b>Category range:</b> 1 – 3 years	<b>Starting Point:</b> 1 year <b>Category range:</b> High level community order – 2 years	<b>Starting Point:</b> 26 weeks <b>Category range:</b> Low level community order – 1 year

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Totality* guideline and step five of this guideline.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

### Factors increasing seriousness

#### *Statutory aggravating factors:*

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- **Note:** An offender convicted of this offence will always have at least one relevant previous conviction for the offence that resulted in disqualification. The starting points and ranges take this into account; any other previous convictions should be considered in the usual way.
- Offence committed whilst on bail

#### *Other aggravating factors:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- History of disobedience to disqualification orders (where not already taken into account as a previous conviction)
- Disregarding warnings of others about driving whilst disqualified
- Blame wrongly placed on others
- False details given
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Offence committed on licence or while subject to court order(s) (not including the current order for disqualification)

**Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Actions of the victim or a third party contributed significantly to collision or death
- Efforts made to assist or seek assistance for victim(s)
- Remorse
- The victim was a close friend or relative
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relative(s)

**STEP THREE**

**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR**

**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.

**STEP FIVE**

**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

**STEP SIX**

**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

- Ancillary orders – Magistrates' Court
- Ancillary orders – Crown Court Compendium

**STEP SEVEN**

**Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP EIGHT**

**Consideration for time spent on bail (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

# **Causing injury by wanton or furious driving**

**Offences Against the Person Act 1861 (section 35)**

**Triable only on indictment**

**Maximum: 2 years' custody**

**Offence range: Fine – 2 years' custody**

**STEP ONE****Determining the offence category****CULPABILITY**

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify upwards adjustment from the starting point before consideration of aggravating/mitigating factors.

References to driving below include driving or riding any kind of vehicle or carriage, including bicycles.

<b>A – High culpability</b>	<ul style="list-style-type: none"> <li>• Deliberate decision to ignore the rules of the road and/or disregard for the risk of danger to others.</li> <li>• Prolonged, persistent and deliberate course of driving likely to cause a danger to others</li> <li>• Driving grossly impaired by consumption of alcohol or drugs</li> <li>• Offence committed in course of police pursuit</li> <li>• Racing or competitive driving against another vehicle</li> <li>• Disregarding warnings of others</li> <li>• Lack of attention to driving for a substantial period of time</li> <li>• Speed greatly in excess of speed limit</li> <li>• Extreme example of a medium culpability factor</li> </ul>
<b>B – Medium culpability</b>	<ul style="list-style-type: none"> <li>• Unsafe manoeuvre or positioning</li> <li>• Engaging in a brief but avoidable distraction</li> <li>• Inappropriate speed for the prevailing conditions</li> <li>• Driving impaired by consumption of alcohol or drugs</li> <li>• Visibility or controls obstructed</li> <li>• Driving impaired as a result of a known medical condition</li> <li>• Disregarding advice relating to the effects of medical condition or medication</li> <li>• Driving when deprived of adequate sleep or rest</li> </ul>
<b>C – Lower culpability</b>	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

**HARM**

Category 1	<ul style="list-style-type: none"> <li>• Death</li> <li>• Grave and/or life-threatening injury caused</li> <li>• Injury results in physical or psychological harm resulting in lifelong dependency on third party care or</li> </ul>
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	medical treatment <ul style="list-style-type: none"> <li>• Offence results in a permanent, irreversible injury or condition</li> </ul>
Category 2	<ul style="list-style-type: none"> <li>• Other cases of serious harm</li> </ul>
Category 3	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

## STEP TWO

### Starting point and category range

	Culpability		
	A	B	C
Harm 1	<b>Starting Point:</b> 1 year 6 months <b>Category range:</b> 1 - 2 years	<b>Starting Point:</b> 1 year <b>Category range:</b> 26 weeks – 1 year 6 months	<b>Starting Point:</b> 26 weeks <b>Category range:</b> High level community order – 1 year
Harm 2	<b>Starting Point:</b> 1 year <b>Category range:</b> 26 weeks – 1 year 6 months	<b>Starting Point:</b> 26 weeks <b>Category range:</b> High level community order – 1 year	<b>Starting Point:</b> High level community order <b>Category range:</b> Low level community order – 26 weeks
Harm 3	<b>Starting Point:</b> 26 weeks <b>Category range:</b> High level community order – 1 year	<b>Starting Point:</b> High level community order <b>Category range:</b> Low level community order – 26 weeks	<b>Starting Point:</b> Low level community order <b>Category range:</b> Band B fine – High level community order

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Totality* guideline and step five of this guideline.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

### Factors increasing seriousness

#### *Statutory aggravating factors:*

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

### *Other aggravating factors:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Driving for commercial purposes
- Driving LGV, HGV, PSV
- Other driving offences committed at or about the same time
- Blame wrongly placed on others
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Offence committed on licence or while subject to court order(s)

### **Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Impeccable driving record
- Actions of the victim or a third party contributed significantly to collision
- Offence due to inexperience rather than irresponsibility
- Genuine emergency
- Efforts made to assist or seek assistance for victim(s)
- Remorse
- The victim was a close friend or relative
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

### **STEP THREE**

#### **Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

### **STEP FOUR**

#### **Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.

### **STEP FIVE**

#### **Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

**STEP SIX**

**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

- Ancillary orders – Magistrates' Court
- Ancillary orders – Crown Court Compendium

**STEP SEVEN**

**Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP EIGHT**

**Consideration for time spent on bail (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

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# **Driving or Attempting to Drive with a specified drug above the specified limit**

**Road Traffic Act 1988, 5A**

**Triable only summarily**

**Maximum: Unlimited fine and/or 6 months' custody**

**Offence range: Band B fine – 26 weeks' custody**

**Obligatory disqualification: minimum 12 months**

**(Minimum 3 years disqualification if the offender has been convicted of any of:**

- causing death by careless driving when under the influence of drink or drugs;**
- driving or attempting to drive while unfit**
- driving or attempting to drive with excess alcohol,**
- driving or attempting to drive with concentration of specified controlled drug above specified limit**
- failing to provide a specimen) where that is an offence involving obligatory disqualification,**
- failing to allow a specimen to be subjected to laboratory test) where that is an offence involving obligatory disqualification**

**in the 10 years preceding commission of the current offence.**

**Otherwise minimum 2 years disqualification if the offender has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence)**

## STEP ONE

### Determining the offence category

The Court should determine the offence category using the table below.

<b>Category 1</b>	Higher culpability <b>and</b> greater harm
<b>Category 2</b>	Higher culpability <b>and</b> lesser harm <b>or</b> lower culpability <b>and</b> greater harm
<b>Category 3</b>	Lower culpability <b>and</b> lesser harm

The court should determine the offender's culpability and the harm caused with reference **only** to the factors below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify upwards adjustment from the starting point before consideration of aggravating/mitigating factors.

#### Culpability demonstrated by one or more of the following

##### Factors indicating higher culpability

- Driving an LGV, HGV or PSV etc
- Driving for hire or reward
- Evidence of another specified drug or of alcohol in the body
  - For these purposes where the following pairs of drugs appear together they shall be treated as one drug as they may appear in the body as a result of a single drug use: Cocaine and benzoylecgonine (BZE); 6-Monoacetyl-morphine and morphine; or Diazepam and Temazepam.
  - This factor may apply whether or not the 'other' specified drug or alcohol is present at a level that could give rise to separate charges.
  - Regard should be had to totality (see step 5) if sentencing for more than one offence.

##### Factors indicating lower culpability

- All other cases

#### Harm demonstrated by one or more of the following:

##### Note: It is not possible to draw a direct connection between the levels of a substance detected and the level of harm

The limits for illegal drugs are set in line with a zero tolerance approach but ruling out accidental exposure. The limits for drugs that may be medically prescribed are set in line with a road safety risk-based approach, at levels above the normal concentrations found with therapeutic use. This is different from the approach taken when setting the limit for alcohol, where the limit was set at a level where the effect of the alcohol would be expected to have impaired a person's driving ability.

The analysis of drugs in blood is more complex than that for alcohol and there is a larger margin of uncertainty in the measurements. Concentrations of specified substances in blood for the purposes of this offence are expressed in terms of 'not less than' which takes account of the margin of uncertainty for the particular substance.

##### Factors indicating greater harm

- Obvious signs of impairment
- Evidence of an unacceptable standard of driving

**Factors indicating lesser harm**

- All other cases

**STEP TWO****Starting point and category range**

Having determined the category at step one, the court should use the appropriate starting point to reach a sentence within the category range in the table below.

The starting point applies to all offenders irrespective of plea or previous convictions.

Level of seriousness	Starting point	Range	Disqualification	Disqual. 2 <sup>nd</sup> offence in 10 years
<b>Category 1</b>	12 weeks' custody	High level community order – 26 weeks' custody	29 – 36 months (Extend if imposing immediate custody)	36 – 60 months (Extend if imposing immediate custody)
<b>Category 2</b>	Medium level community order	Low level community order – High level community order	17 – 28 months	36 – 52 months
<b>Category 3</b>	Band C fine	Band B fine – Low level community order	12 – 16 months	36 – 40 months

Note: when considering the guidance regarding the length of disqualification in the case of a second offence, the period to be imposed in any individual case will depend on an assessment of all the relevant circumstances, including the length of time since the earlier ban was imposed and the gravity of the current offence but disqualification must be for at least three years.

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Totality* guideline and step five of this guideline.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

**Factors increasing seriousness**

*Statutory aggravating factors:*

- Previous convictions, having regard to a) the **nature** of the offence to which the

conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

- Offence committed whilst on bail

*Other aggravating factors:*

- High level of traffic or pedestrians in the vicinity
- Poor road or weather conditions
- Involved in accident (where not taken into account at step 1)
- Carrying passengers
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision

#### **Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Very short distance driven
- Genuine emergency established
- Genuine misunderstanding about safe dosage of prescribed medication
- Remorse
- Good character and/or exemplary conduct
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

### **STEP THREE**

#### **Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

### **STEP FOUR**

#### **Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.

### **STEP FIVE**

#### **Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

## **STEP SIX**

### **Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Ancillary orders – Magistrates' Court

## **STEP SEVEN**

### **Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

## **STEP EIGHT**

### **Consideration for time spent on bail (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

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# **Being in charge of a motor vehicle with a specified drug above the specified limit**

**Road Traffic Act 1988, 5A**

**Triable only summarily**

**Maximum: Level 4 fine and/or 3 months**

**Offence range: Band B fine – 12 weeks' custody**

## STEP ONE

### Determining the offence category

The Court should determine the offence category using the table below.

<b>Category 1</b>	Higher culpability <b>and</b> greater harm
<b>Category 2</b>	Higher culpability <b>and</b> lesser harm <b>or</b> lower culpability <b>and</b> greater harm
<b>Category 3</b>	Lower culpability <b>and</b> lesser harm

The court should determine the offender's culpability and the harm caused with reference **only** to the factors below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify upwards adjustment from the starting point before consideration of aggravating/mitigating factors.

#### Culpability demonstrated by one or more of the following

##### Factors indicating higher culpability

- High likelihood of driving
- In charge of LGV, HGV or PSV etc.
- Offering to drive for hire or reward
- Evidence of another specified drug or of alcohol in the body

- For these purposes where the following pairs of drugs appear together they shall be treated as one drug as they may appear in the body as a result of a single drug use: Cocaine and benzoylecgonine (BZE); 6-Monoacetyl-morphine and morphine; or Diazepam and Temazepam.
- This factor may apply whether or not the 'other' specified drug or alcohol is present at a level that could give rise to separate charges.
- Regard should be had to totality (see step 5) if sentencing for more than one offence.

##### Factors indicating lower culpability

- All other cases

#### Harm demonstrated by one or more of the following

##### Factors indicating greater harm

- Obvious signs of impairment

##### Factors indicating lesser harm

- All other cases

## STEP TWO

### Starting point and category range

Having determined the category at step one, the court should use the appropriate starting point to reach a sentence within the category range in the table below.

The starting point applies to all offenders irrespective of plea or previous convictions.



Level of seriousness	Starting point	Range	Disqualification/ points
<b>Category 1</b>	High level community order	Medium level community order – 12 weeks' custody	Consider disqualification (extend if imposing immediate custody) <b>OR</b> 10 points
<b>Category 2</b>	Band C fine	Band B fine – Medium level community order	Consider disqualification <b>OR</b> 10 points
<b>Category 3</b>	Band B fine	Band B fine	10 points

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Totality* guideline and step five of this guideline.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

### Factors increasing seriousness

*Statutory aggravating factors:*

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

*Other aggravating factors:*

- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Genuine misunderstanding about safe dosage of prescribed medication
- Remorse
- Good character and/or exemplary conduct
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

### **STEP THREE**

#### **Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

### **STEP FOUR**

#### **Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.

### **STEP FIVE**

#### **Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

### **STEP SIX**

#### **Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Ancillary orders – Magistrates' Court

### **STEP SEVEN**

#### **Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

### **STEP EIGHT**

#### **Consideration for time spent on bail (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section